

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AUTHORS GUILD, DAVID BALDACCI, MARY BLY, MICHAEL CONNELLY, SYLVIA DAY, JONATHAN FRANZEN, JOHN GRISHAM, ELIN HILDERBRAND, CHRISTINA BAKER KLINE, MAYA SHANBHAG LANG, VICTOR LAVALLE, GEORGE R.R. MARTIN, JODI PICOUlt, DOUGLAS PRESTON, ROXANA ROBINSON, GEORGE SAUNDERS, SCOTT TUROW, and RACHEL VAIL, individually and on behalf of others similarly situated,

Plaintiffs,

v.

OPENAI INC., OPENAI OPCO LLC, OPENAI GP LLC, OPENAI LLC, OPENAI GLOBAL LLC, OAI CORPORATION LLC, OPENAI HOLDINGS LLC, OPENAI STARTUP FUND I LP, OPENAI STARTUP FUND GP I LLC, OPENAI STARTUP FUND MANAGEMENT LLC, and MICROSOFT CORPORATION,

Defendants.

JONATHAN ALTER, KAI BIRD, TAYLOR BRANCH, RICH COHEN, EUGENE LINDEN, DANIEL OKRENT, JULIAN SANCTON, HAMPTON SIDES, STACY SCHIFF, JAMES SHAPIRO, JIA TOLENTINO, and SIMON WINCHESTER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI, LLC, OPENAI OPCO LLC, OPENAI GLOBAL LLC, OAI CORPORATION, LLC, OPENAI HOLDINGS, LLC, and MICROSOFT CORPORATION,

Defendants.

Case No. 1:23-cv-08292-SHS;
Case No. 1:23-cv-10211-SHS

DECLARATION OF JUSTIN A. NELSON IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPOINT LIEFF CABRASER HEIMANN & BERNSTEIN, LLP, SUSMAN GODFREY L.L.P., AND COWAN DEBAETS ABRAHAMS & SHEPPHARD LLP AS INTERIM CO-LEAD COUNSEL FOR THE FICTION AND NONFICTION AUTHORS' CLASSES

I, Justin A. Nelson, declare as follows:

1. I am an active member in good standing of the State Bar of Texas, a partner in the law firm of Susman Godfrey L.L.P. and counsel of record for Plaintiffs in *Sancton v. OpenAI Inc. et al*, Case No. 1:23-cv-10211-SHS. I have personal knowledge of the facts set forth herein, and, if called as a witness, would testify competently thereto.

2. I make this declaration in support of Plaintiffs' Motion to Appoint Lieff Cabraser Heimann & Bernstein, LLP, Susman Godfrey L.L.P., and Cowan DeBaets Abrahams & Sheppard, LLP Interim Co-Lead Counsel for the Fiction and Non-Fiction Books Classes.

3. Susman Godfrey has devoted substantial time and resources to identify and to investigate the claims at issue. Before filing, Susman Godfrey investigated publicly available information that gave rise to the writers' claims, the artificial intelligence industry, and the injury and damages caused by Defendants' alleged conduct. Susman Godfrey reviewed publicly available information to collect evidence along with investigating how the Defendants operate and how ChatGPT works. Susman Godfrey's investigation informed Plaintiffs' complaint and the claims alleged therein against Defendants.

4. Susman Godfrey's experience in complex litigation, class action cases, and copyright matters will be a substantial benefit to the Classes and the Court. A copy of Susman Godfrey's firm profile is attached as **Exhibit A**.

5. Susman Godfrey has extensive experience in handling complex class actions and copyright disputes, including some of the largest and most complex cases in the nation, and has demonstrated that it has the ability and resources to handle such cases effectively and efficiently. Since the firm's founding in 1980, Susman Godfrey has served as lead counsel in hundreds of class actions and complex copyright disputes in courts throughout the country.

6. A sample of Susman Godfrey's complex class action experience includes:

- *Melissa Ferrick et al. v. Spotify USA Inc., et al.*, No. 1:16-cv-08412-AJN (S.D.N.Y.) (appointed co-lead counsel for settlement purposes and secured a settlement valued at \$112 million on behalf of a class of composition owners for claims of nonpayment of royalties for music streaming);
- *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 2:13-cv-05693-PSG-GJS (C.D. Cal.) (appointed co-lead counsel and secured \$25.5 million and additional royalties);
- *In re Libor-based Financial Instruments Antitrust Litigation*, No. 11-md-02262 (S.D.N.Y.) (appointed co-lead class counsel and secured \$780 million in settlements for plaintiffs who allege several banks were involved in setting LIBOR and manipulating it to their advantage);
- *In re AXA Equitable Life Insurance Company COI Litigation*, No. 1:16-cv-740 (S.D.N.Y.) (appointed lead counsel, advanced over \$4 million in expenses, and secured \$307.5 million in nonreversionary cash settlement in insurance breach-of-contract action);
- *37 Besen Parkway, LLC v. John Hancock Life Ins. Co. (U.S.A.)*, 15-cv-9924 (S.D.N.Y.) (appointed sole interim class counsel in insurance breach-of-contract action and secured \$91.25 million all-cash settlement);
- *In re Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich.) (appointed co-lead class counsel and secured over \$1.2 billion in settlements to date for a class of end payor plaintiffs against dozens of automobile suppliers who engaged in price-fixing and bid-rigging);
- *In re Animation Workers Antitrust Litigation*, No. 14-cv-4062 (N.D. Cal.) (appointed co-lead class counsel and secured more than \$168 million in settlements for a class of animation industry employees against the largest animation companies, including Disney, Pixar, Lucas Films, DreamWorks, and Sony, based on restrictions on their ability to compete against one another for talent);
- *In Re: Tiktok, Inc Consumer Privacy Litigation*, No. 1:20-cv-04699 (N.D. Ill.) (appointed to Steering Committee to represent plaintiffs in a Biometric Information Privacy Act class action MDL against TikTok and its parent company and obtained a \$92 million litigation-wide settlement)

- *White v. NCAA*, No. 07-mc-54 (W.D. Pa.) (appointed co-lead counsel for class of current and former football and basketball players at Division I schools, securing over \$200 million in settlements)

7. Susman Godfrey has successfully led several complex class actions in this District.

This past year, in *In re AXA Equitable Life Insurance Company COI Litigation*, No. 1:16-cv-740 (S.D.N.Y.), Susman Godfrey, as sole class counsel, secured a \$307.5 million nonreversionary cash settlement on behalf of a class of policyholders subject to cost-of-insurance overcharges. A true and correct copy of excerpts of the transcript of the fairness hearing from the *AXA COI* matter is attached as **Exhibit B**. In approving the settlement, Judge Jesse M. Furman recognized that the “class has been exceedingly well represented” by Susman Godfrey. Ex. B at 13:14-18.

8. In *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)*, 15-cv-9924 (S.D.N.Y.), Susman Godfrey served as sole lead counsel on behalf of a class of life insurance policyholders alleging breach of their insurance contracts. Susman Godfrey obtained a \$91.25 million all-cash settlement for the class. A true and correct copy of excerpts of the transcript of the fairness hearing held in the *37 Besen* case is attached as **Exhibit C**. Judge Paul Gardephe praised the settlement as a “quite extraordinary . . . result achieved on behalf of the class.” Ex. C at 20:10-11.

9. Susman Godfrey will seek the best result for its clients, including prosecuting cases through trial, if necessary.

10. For example, Susman Godfrey secured a federal jury verdict of more than \$166 million for client *Finesse Wireless LLC* in its patent infringement lawsuit against AT&T and Nokia. *Finesse Wireless LLC v. AT&T Mobility LLC*, Case No. 2:21-CV-00316-JRG (E.D. Tex.).

11. Likewise, Susman Godfrey won a jury trial for a class of California residential telephone customers who were overcharged millions by AT&T. The Tenth Circuit upheld the

verdict. *See In re Universal Service Fund Telephone Billing Practices Litig.*, 619 F.3d 1188 (10th Cir. 2010).

12. Susman Godfrey's experience, track record of success, and staying power are reflected in its wide recognition as a national leading trial firm, including being named "Litigation Boutique of the Year" in 2023 by *The American Lawyer*, "Commercial Litigation Firm of the Year" in 2023 by *Benchmark Litigation*, nominated for Law Firm of the Year in 2023 by *The American Lawyer* with firms multiples its size, a firm on "America's Elite Trial Lawyers" by *the National Law Journal*, and Law 360's 2017 "Class Action Group of The Year." Dozens of the firm's lawyers are recognized every year as "Super Lawyers" and "Rising Stars" in the states where they practice. The firm currently has about 150 lawyers nationwide in its five offices, over 90% of whom served in federal judicial clerkships, including the vast majority on federal appellate courts and ten of whom clerked on the United States Supreme Court.

13. Susman Godfrey partner Justin A. Nelson has practiced law for more than twenty years, litigating complex cases in state and federal courts throughout the United States. He has served as an adjunct professor at the University of Texas School of Law. He is a former law clerk to the Honorable Sandra Day O'Conner of the United States Supreme Court and to the Honorable J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit. In 2023, Mr. Nelson represented Dominion Voting Systems against Fox News in helping secure the landmark \$787.5 million settlement arising from the latter's defamatory news coverage claiming that Dominion's voting machines were responsible for massive voter fraud during the 2020 U.S. presidential election. The settlement is believed to be the largest defamation settlement in history. The Court in *Dominion v. Fox* publicly noted that "this is the best lawyering I've had, ever." Mr. Nelson routinely represents clients in high-stakes and complex litigation, including helping secure

a nine-figure settlement against a large rental car company for a group of people who alleged they had been falsely arrested—a set of cases that spanned multiple courts and jurisdictions, including bankruptcy court. Mr. Nelson has been named as one of the leading 500 litigators and plaintiff financial lawyers in America by Lawdragon. Among other awards, he has also been repeatedly recognized as American Lawyer’s Litigator of the Week and a Benchmark Litigation, Litigation Star. A copy of Justin A. Nelson’s attorney profile included in **Exhibit D**.

14. Susman Godfrey partner Rohit D. Nath has extensive experience litigating class actions, including those involving allegations of breach of contract and royalty disputes. He served as co-lead counsel, alongside a team of Susman Godfrey lawyers, in the *AXA COI* (\$307.5 million settlement) and *37 Besen* (\$91.25 million settlement) matters discussed above. He has been recognized as one of the best young lawyers in America by Lawdragon and Bloomberg Law. He was also named one of the California Attorneys of the Year by Daily Journal for his successful defense of COVID-19 eviction-protection measures against constitutional challenges. Mr. Nath joined Susman Godfrey after clerking for Judge Alex Kozinski on the United States Court of Appeals for the Ninth Circuit and serving as editor-in-chief of the *University of Chicago Law Review*. A copy of Rohit D. Nath’s attorney profile is included in **Exhibit D**.

15. Susman Godfrey partner Alejandra C. Salinas is an experienced trial lawyer who has litigated complex cases in state and federal courts throughout the United States. She has amassed an impressive collection of litigation victories and favorable settlements for clients who vary from Fortune 500 industry leaders to a class of indigent detainees, including a recent \$37.5 million jury verdict. She currently represents numerous indirect purchasers in a proposed class action against telescope manufacturers and distributors. She has also defended class action cases, including a case on behalf of Westlake Chemical Corporation. She has been recognized as one of

the best young lawyers in America by Lawdragon, a Texas Rising Star by Thomas Reuters Super Lawyer, and a Top Women in Law in Houston by the National Diversity Council. A copy of Alejandra C. Salinas's attorney profile is included in **Exhibit D**.

16. Susman Godfrey associate J. Craig Smyser has represented plaintiffs and defendants in all types of high stakes commercial litigation. He joined Susman Godfrey after clerking for the Honorable Debra Ann Livingston of the United States Court of Appeals for the Second Circuit and for the Honorable Christopher R. Cooper of the United States District Court for the District of Columbia. A copy of J. Craig Smyser's attorney profile is included in **Exhibit D**.

17. The Nonfiction Plaintiffs served their first set of requests for admission on both Microsoft and the OpenAI Defendants on December 29, 2023.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of January, 2024, at Austin, Texas.

/s/ Justin A. Nelson
Justin A. Nelson